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By:



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NOV - 3 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARYSteven Brill  
President and Editor in Chief

October 7, 1994

Blair Levin  
Chief of Staff  
The Federal Communications Commission  
Washington, D.C.

BY Fax: (202) 632-0163

Dear Mr. Levin:

I just want to reiterate that any going-forward rule that does not provide for specific credit to operators for programming costs and/or does not meet or come close to the \$1.50 cap that has been discussed will not only be useless to a serious public service channel like Court TV but will be absolutely harmful -- and especially harmful when laid on top of the rules in place that discriminate in favor of incumbent channels.

By not providing for program costs in a going-forward equation, the Commission will be insuring that free channels of little value to the consumer -- or channels that simply sell products to consumers 24 hours a day -- will occupy all available channel capacity going forward. Thus, in the name of providing incentives to expand the programming services made available to consumers you will be working instead to snuff out valuable new services that have not yet achieved broad distribution.

Sincerely,

600 Third Avenue, New York, NY 10016  
Phone: (212) 973-2800 • Fax: (212) 973-3355

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City Hall Offices

*City of Iron Mountain*

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

501 S. Stephenson Avenue  
Iron Mountain, Michigan 49801  
Telephone 906-774-8530  
FAX 906-774-3774

October 18, 1994

OCT 24 2 33 PM '94

The Honorable Reed Hundt, Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Chairman Hundt:

The City of Iron Mountain, Michigan is certified to regulate cable rates. We are concerned that you have another significant revision to your rate regulation rules under consideration and to learn in addition that in the last few months you have met 20 times with cable operators but at most have met once with municipalities.

Please do not make any changes to your rate rules without disclosing to municipalities and their trade organizations the proposals you are considering and obtaining input from them comparable to that which you are getting from the cable companies. Input from communities such as ours which have actually been through the experience of regulating rates and know how cable operators sometimes manipulate the evade your regulations at the local level can help you get a better result.

Municipalities are equal partners with the FCC in regulating rates and have exclusive jurisdiction over basic cable rates. You run a grave risk that your changes will "backfire" and hurt rate regulation and customers if you act without input from the municipalities that actually will have to implement your rules at the local level.

For example, having had to deal with two sets of basic rate regulation proceedings in the last year (first Form 393, then form 1200) where only one was expected has depleted many municipalities' resources for dealing with rate regulation. Thus you need to make sure that any changes you are proposing are workable at the local level. The cable companies have a vested interest in making sure that the changes are burdensome to us (even if they do not appear that to you) because the cable companies know that this may lead to many communities dropping rate regulation.

The bottom line is that you have to get municipal input to make sure your proposed changes worked. You have not done that on these new changes and need to do so to get the best result and prevent significant problems.

Very truly yours,

*Edward Koerschner*

Edward Koerschner  
Mayor

c.c. (attached)

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# Charter Township of Flint

1490 S. Dye Road  
Flint, Michigan 48532  
Phone: (810) 732-1350  
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Linda R. Barber  
David S. Leyton

CONSTABLES  
Robert D. Friend  
Nikolas Anagnostopoulos

October 17, 1994

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Oct 24 2 33 PM '94

Dear Chairman Hundt,

The Charter Township of Flint is certified to regulate cable rates. We have not yet digested the current rate rules and regulations and we are concerned that you have another significant revision to your rate regulation rules under consideration. In addition, we were surprised to hear that in the last few months you have apparently met 20 times with cable operators but, at most, have met only once with representatives of municipalities.

We are requesting that you not make any changes to your rate rules without first disclosing to municipalities and their trade organizations the proposals you are considering. We are also suggesting that you obtain input from communities such as ours which are still struggling through the experience of regulating rates at the local level to obtain a more equitable result.

Municipalities are supposed to be equal partners with the FCC in regulating rates and have exclusive jurisdiction over basic cable rates. If the FCC acts without input from the municipalities which actually are required to implement the rules at the local level, there is grave risk that the changes will "backfire" and actually hurt the consumers they were intended to assist.

For example, trying to deal with two different sets of basic rate regulation proceedings in the last year (first form 393, then form 1200) where only one regulation was expected has depleted the resources of many municipalities. Therefore, it is imperative that we make sure that any changes proposed by the FCC are workable at the local level. The cable companies have a vested interest in making sure changes are burdensome to us, even if they do not appear to be burdensome to you, because the cable companies know that these changes may lead to rate regulation

being abandoned by many communities, rather than attempting to oversee unworkable and burdensome rules.

The bottom line is municipalities must be allowed into the process, as well as the cable companies, in order to make certain the changes proposed by the FCC are equitable.

If you have any questions, please feel free to contact me.

Sincerely,



Sally Shaheen Joseph, J.D.

SSJ\mmk

cc: Ms. Merrill Spiegle  
Commissioner James Quello  
Ms. Maureen O'Connell  
Commissioner Andrew Barrett  
Ms. Lisa Smith, Attorney  
Mr. Jim Colthorp  
Commissioner Rachelle Chong  
Ms. Jill Lackett  
Commissioner Susan Ness  
Ms. Donna Stapleton

letters\ssj\fcchundt.017



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**CABLE SERVICES BUREAU**

P.O. Box 900

Beverly Hills, California 90213-0900

Phone 310 203 3474 • Fax 310 203 2452

**OCT 21 1994**

**CABLE SERVICES BUREAU CHIEF**

Anne M. Sweeney

Chairman and

Chief Executive Officer

October 21, 1994

92-268

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Chairman Hundt:

I write with the greatest possible alarm regarding the Commission's reported imminent decision on a two year "going forward" proposal for new cable program service incentives.

Under your proposal, cable operators will be incented to add to regulated tiers only free services or services of little value. This is true because the price-value calculation which an operator normally would employ in selecting new services has been skewed by the recent FCC-ordered rate cuts. Therefore the goal of recouping lost revenues will drive operators to maximize the incentive mark-up portion of the overall cap. The proposal will also insulate entrenched (mostly vertically integrated) program services from competition from new services like fX that are willing to invest heavily in strong programming and fight aggressively for berths in wide circulation regulated tiers.

I do realize that other priorities may require you to be indifferent to these consequences. However, it is absolutely clear that your proposal will make it virtually impossible for new services like fX to compete for widespread distribution on regulated cable tiers. The precarious (and ironic) position we now find ourselves in is that the Commission's proposal reduces our ability to effectively compete in the future yet it was the Commission's extraordinary help last May which originally facilitated our launch. Under the pending proposal we will be unable to effectively compete with the dominant, entrenched and widely distributed services despite our programming commitment of over \$100 million annually including seven hours a day of original programming. The entrenched services may not like other portions of your proposal, but I am quite sure that they will be grateful for the Commission's unintended help in eliminating the threat of competition.

No one -- not Fox, not anyone -- can hope to compete with the widely circulated, mainstream basic services from lower circulation slots on higher tiers which are better served by the niche services. It is impossible to overstate the anti-competitive

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The Honorable Reed E. Hundt

October 21, 1994

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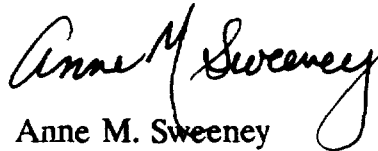
consequences of an artificial and governmentally created world of program service "haves" and "have nots."

At this late hour, and given all of the conflicting pressure upon you, we have only two specific and urgent pleas. First, it is absolutely critical that the Commission permit at least some modicum of migration from regulated tiers to a-la-carte tiers so that new services have a realistic chance (however slim) to fight their way into basic. As a corollary benefit, entrenched services would be incented to stay fresh and to continue putting value on the screen.

Second, the pending proposal should be amended so that the \$1.50 cap is split between 80¢ for mark-up and 70¢ for actual program fees. This more equitable split between programming and mark-up will ensure that consumers receive the highest quality programming for their money. If this amendment is not acceptable, please allow an increase of 50¢ in the overall cap (to a total of \$2.00) if, and only if, the additional 50¢ is allocated solely for program service license fees.

This modest change in your proposal would eliminate the regulatory bias in favor of services that are free or of little value and would give services like fX a least a chance to fight for distribution. Combined with a limited amount of migration, (e.g. two services over two years) the unintended anti-consumer and anti-competitive aspects of the proposal would be substantially reduced.

Very truly yours,

  
Anne M. Sweeney

cc: The Honorable James H. Quello  
The Honorable Andrew C. Barrett  
The Honorable Rachelle B. Chong  
The Honorable Susan Ness  
Meredith Jones, Esq.  
Kathleen M.H. Wallman, Esq.  
William H. Johnson, Esq.  
William E. Kennard, Esq.  
Blair Levin, Esq.  
Merrill Spiegel, Esq.

**The Honorable Reed E. Hundt**  
**October 21, 1994**  
... 3

**Lauren J. Belvin, Esq.**  
**Maureen O'Connell, Esq.**  
**Byron F. Marchant, Esq.**  
**Lisa B. Smith, Esq.**  
**James R. Coltharp, Esq.**  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. Reed Hundt  
Chairman of the Federal Communications Commission  
Washington, DC

Dear Sir:

I am writing to you in support of the Cable Television Consumer Protection and Competition Act of 1992 and related amendments which put a cap on cable operators' ability to raise prices on cable subscribers. For many years now, cable operators have taken advantage of their monopoly position with regards to the provision of multi-channel video services to charge ever higher rates from consumers. While cable companies complain that they cannot upgrade their systems without higher rates, these higher rates are necessary in large part to offset the enormous revenue losses stemming from the cable industry's inability to remedy a widespread signal piracy problem.

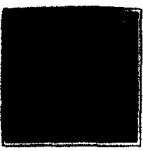
Cable signal piracy is a prevalent phenomenon which is often overlooked but has a dramatic and ever-growing impact on the cable and entertainment industries' ability to generate revenues.

To give you an idea of the magnitude of this phenomenon, the latest statistics of the National Cable Television Association (NCTA), the cable industry's flagship trade group, indicate that the CATV industry loses \$4.7 billion in revenues annually as a direct result of cable piracy. This represents an increase of 56% over the NCTA's prior estimate dating back to 1990, which projected an annual loss of \$3 billion in unrealized revenues. These statistics only represent lost revenue from services, and do not reflect the costs associated with tracing down offenders, replacing damaged equipment and attempting to curb abuse.

Assuming an operating margin of 40%, the lost cash flow to the industry is over 40% of \$4.7 billion, or \$1.9 billion, well in excess of most estimates of cash flow losses attributable to the 1992 Act.

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The Motion Picture Association of America has estimated that its members lose over \$50 million annually to signal theft. Furthermore, a 1993 study by the Video Software Dealers Association estimated that losses from PPV piracy were greater than revenues from the service itself. The study theorized that the curtailing of PPV theft would lead to a combined revenue gain of \$232-\$502 million for program suppliers and video retailers. Thus, signal theft was a major factor behind the major movie studios' decision to extend their (pre-PPV) home video rental windows from 30 days to 60-80 days.

Cable signal theft is not only a widespread occurrence among television households, but among commercial establishments as well. According to the NCTA, the cable piracy rate among commercial establishments is approximately 5%. This estimate is dwarfed by the results of Home Box Office's sting operations aimed at commercial establishments which pirate pay-per-view cable signals. During its three nationwide sweeps between June 1990 and February 1993, the cable programmer found violation rates ranging from 12% to 38%.

Piracy affects the picture quality of a CATV system by weakening the signal. In some systems, poor picture quality is the reason for service calls and other system maintenance which increases system costs and puts pressure on cable rates. Furthermore, most of the equipment used by cable pirates is not built to system specifications. Therefore, radio signals used to transmit cable television can leak into frequencies reserved for aeronautical and emergency communications, producing potential safety problems.

Some cable operators have resorted to preventive advertising campaigns, threatened transgressors individually with law suits, and carried out amnesty campaigns for pirates. Operators have resorted to electronic measures of a preventive nature, such as "traps" and "interdiction", and of an offensive nature, such as "electronic bullets" which disable illegal decoder chips, but to no avail. Despite raids leading to the seizure of over 400,000 illegal devices in the last three years, the signal piracy problem continues to plague the cable industry, unabated. Perhaps most importantly, not all operators have been as vigorous in pursuing theft, not wanting to spend the time and money, or, ultimately, perhaps see a reduction in their subscriber count or a rise in their programming fees.

Over 1,300 cable piracy cases were prosecuted in our courts in 1992, with sentences ranging from probation to 16 years in prison. Nevertheless, to this day, many of the otherwise law-abiding citizens who resort to cable piracy are genuinely surprised when they are charged with signal theft. What is the root cause of such widespread cable piracy? In part, it can be attributed to the high rates imposed on consumers by traditional cable monopolies which has led to a collective desire for some form of retribution.

Cable signal piracy is a serious threat to the well-being of the cable industry and represents an underground economy resulting in millions of dollars of losses to the government, and ultimately to taxpayers, in the form of unrealized taxes.

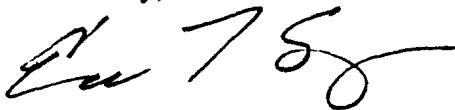
The \$4.7 billion in unrealized cable revenues annually translates into over \$235 million in franchise fees lost by municipalities which could go towards improving educational programs, enhancing health care and social services and battling crime and pollution.

Mr. Chairman, I urge you to help battle cable piracy by encouraging competition in the local video services monopolies, by continuing to enable competitive forces to play their course and bring cable rates down to levels that are acceptable to the American consumer. With competition, cable companies will be forced to maintain and improve their current cash flows and service, which will in turn improve the ethical and moral character of all loyal pay TV customers by removing the impetus to follow their neighbors' lead and steal cable service.

Here included is a short report on the cable piracy phenomenon and its detrimental impact on the American economy. I hope that you will find it useful and informative.

Best Regards,

Sincerely,

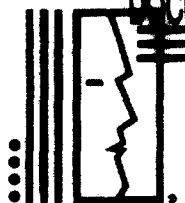
A handwritten signature in black ink, appearing to read "Eric T. Singer", with a stylized flourish at the end.

Eric T. Singer  
Executive Vice President  
Director of Corporate Finance

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

92-266

JONES EDUCATION NETWORKS<sup>TM</sup> INC

June 29, 1994

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Re: Implementation of Sections of the Cable Television  
Protection and Competition Act of 1992;  
Rate Regulation MM Docket No. 92-266

Dear Mr. Chairman:

As Chief Executive Officer of Jones Education Networks, Inc. ("JEN"), I am writing to express my alarm and concern over the severe impact that some of the Commission's new cable rate regulation rules are already having and will continue to have on the development and viability of cable programming services.

JEN owns and operates Mind Extension University (ME/U): The Education Network, the only 24-hour cable television network solely devoted to education via "distance learning". ME/U embodies a longstanding vision and commitment of Glenn R. Jones, the Chairman and Chief Executive Officer of JEN's parent company Jones International, Ltd., to use cable television to meet the educational imperatives of the information age. ME/U enables cable subscribers to take college level courses for credit in their own homes, for which they can ultimately receive undergraduate and graduate degrees from 30 highly respected colleges and universities from all parts of the United States. It also offers pre-college courses and courses that might be taken for self-enrichment on a non-credit basis. Using cable technology, ME/U

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The Honorable Reed E. Hundt

June 29, 1994

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provides a means for all people to overcome the barriers of cost and access to quality education.

ME/U was launched in 1987, and thus was not among those very first groups of satellite program services that became available to cable operators and subscribers and that filled the relatively low channel capacity of the cable systems of the 1970s and early 1980s. Like other new services that began operations in recent years, ME/U's growth has largely depended on the addition of new channels of service by cable systems. Although the marketplace of programming services in which we compete is highly -- and increasingly -- competitive, ME/U has been quite successful in gaining access to newly activated channels on cable systems. Today, we reach 25.6 million television households. But more than half the cable households in the nation still do not have access to ME/U. And what is most troublesome and alarming is that the steady growth in our subscribership has stalled -- not only because cable systems are choosing other satellite networks instead of ME/U to fill newly added channels (in particular, channels requested to be carried in exchange for retransmission consent) but also because they simply are not adding new channels of non-premium services. There's nothing especially mysterious about this development; it is quite clearly the result of the Commission's rate regulation rules.

### **The Rules Are Stunting ME/U's Growth**

The Cable Television Consumer Protection and Competition Act of 1992 created financial uncertainty from the day it was enacted, as cable operators and programmers waited to see how the Commission would implement its regulatory scheme. But the rules ultimately adopted by the Commission exceeded our worst fears. We understood the Act to require that cable operators offer a basic tier containing all the broadcast signals on the system at reduced rates. And we expected that rates for non-basic tiers of satellite services would be set at levels that required reductions by those that had raised rates most egregiously and that prevented all systems from increasing rates too precipitously in the future. But nothing in the Act or the legislative history suggested that the overall rates of virtually all systems would be presumed to be unreasonable -- much less that they would be subject to rollbacks of as much as 17%. It is not surprising that the prospect of rate reductions of this magnitude has made cable operators wary and risk-averse when it comes to investing in new channels of programming on regulated tiers.

**The Honorable Reed E. Hundt**

**June 29, 1994**

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The Commission has seemed genuinely concerned that its rate rollbacks not stifle the growth and development of new programming. But its efforts to insulate new programming from the effects of rate regulation have, so far, proven to be completely ineffective. In particular, the Commission's formula for allowing rate increases when new channels of programming are added to regulated tiers provides cable operators with virtually no incentives for adding such channels. Under that formula, cable systems are allowed, when they add a channel, to pass through to subscribers the additional monthly cost of the programming, plus a 7.5% markup. (The formula also allows an additional markup of a flat amount, which depends on the number of channels on the system, but, for most systems, that amount is negligible -- one or two cents.) For most satellite-delivered services that are not already available on most systems, an approach based on a pass-through with a percentage markup is, on its face, misconceived.

To understand why this is so, consider, as an illustrative example, the way that ME/U markets its service to cable systems. Basically, ME/U understands that, while cable subscribers have demonstrated that they want -- and are willing to pay for -- additional choice and diversity on their systems, the incremental amount that they are willing to pay at the outset for a new channel of service is minimal. Moreover, cable operators incur certain costs when they choose to add a new channel of service. In addition to the costs of activating new channel capacity, they incur costs associated with notifying subscribers of the change in service, marketing and promoting the new service, and dealing with the rate regulation procedures that are triggered by changes in service offerings. Finally, we recognize that, for the cable operator, there are alternatives to devoting new channel capacity to a regulated, tiered service. Pay-per-view, for example, offers a predictable revenue stream with none of the constraints of rate regulation.

The upshot of all these considerations is that, to induce a cable operator to carry a new service like ME/U, we need to make the service available at a price that enables the cable operator to recover its costs and a reasonable profit that at least matches what it could earn from alternative uses of a channel. Because cable operators seem to need to recover amounts at least in the 30 to 50 cent range, and because the incremental amount that subscribers will pay for a new, relatively unknown channel does not greatly exceed this range, it is obvious that we have to provide our service at the outset at a very low price -- and we do. Because ME/U needs to establish viewership and brand-name recognition if it is to grow, we are willing to offer the service to operators for only a few cents per subscriber per month.

The Honorable Reed E. Hundt

June 29, 1994

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This marketing approach worked fine in the absence of rate regulation. To the extent that adding ME/U enhanced the value of cable service to subscribers, cable operators were allowed to capture the lion's share of this added value through rate increases, while ME/U received only a small portion through its small fees for carriage. The Commission's new formula for adding channels in a regulated environment, however, stands this approach on its head. Now, cable operators can only recover 7.5% of any additional fees paid by subscribers, while ME/U retains the remaining 92.5%. In other words, if ME/U now offers its service to cable operators for five cents per subscriber, the cable operator can no longer increase rates for the tier by 35 cents and retain 30 cents; it can only increase rates by 5.375 cents and retain 0.375 cents. This minuscule return is simply not enough to induce cable operators to add a new channel of service, and, therefore, operators are now simply unwilling to add ME/U even when we offer it at very low rates.

But if the problem is simply that 7.5% of our low rates is insufficient to cover the operators' risks and costs of adding the service, why don't we just charge more for the service? If we charge the operator more, it gets to keep more; that's how a percentage markup works. This would, of course, be a perverse result. It makes no sense for regulators to encourage programmers to charge operators more for their programming, with these increased charges to be passed through to subscribers. But operators would not agree to such a scheme in any event. To enable an operator to keep an extra penny under a 7.5% markup approach, a programmer would need to increase its fee to the operator by 13.33 cents. If the operator needed to recover 50 cents per subscriber to justify adding a service, the programmer would have to charge the operator \$6.66, and the operator would have to increase its rates to subscribers by \$7.16. This would provide a bonanza for the programmer but would be a losing proposition for the operator; the decline in subscribership that would result from such a rate increase would surely offset the additional 50 cents earned from each remaining subscriber.

What about the à la carte option? If ME/U were offered on a per-channel basis instead of on a regulated tier, it could be offered at unregulated rates, allowing cable operators to purchase the service at low rates and sell it to subscribers at whatever rates were necessary to provide sufficient incentives to carry the service. But it is unrealistic to think that a recently introduced service like ME/U can successfully be marketed as an à la carte service. Such services need to maximize their potential viewership, and this means that they need to be available for sampling on widely available tiers that include other, more established services.

The Honorable Reed E. Hundt

June 29, 1994

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**The Rules Will Make the Launch of  
New "Distance Learning" Channels Impossible**

If the Commission's approach has stalled the growth of ME/U, its effect on new services that JEN hopes to launch in the near future will be even more severe, if not fatal. JEN has already announced the creation of three such services, all of which are intended to further the goals of distance learning and self-enhancement. One of those services, Jones Computer Network, has been operating since May 17, 1993 as a prime-time segment on ME/U. It provides informational and educational programming about computers and digital technologies, to bring computer novices into the information age while keeping computer experts abreast of the most recent digital developments. While continuing to operate as a segment on ME/U, Jones Computer Network will launch as a full-time network on the GE Americom C-3 satellite later this summer.

The other two educational services will follow the same introductory route, appearing first as segments of ME/U before being launched as full-time satellite networks. The Health Network, which will be designed not only to inform audiences on wellness but to provide educational opportunities and certification in health-related fields, will be launched full-time in 1995. The Language Network, to be focused on foreign language training and international cultural and business matters, will be launched the following year.

All these services will be advertiser-supported. They are all designed to be marketed in the same manner as ME/U -- with low fees to subscribers to induce operators to carry services that are untested and have no brand name recognition. And, therefore, the launch and viability of these services is, for the reasons described above, severely threatened by the Commission's current rules for adding new channels to regulated tiers.

Even in the absence of regulation, the survival of ME/U and its progeny would, of course, be no sure thing. The video marketplace is highly competitive, and for every new service that has succeeded, many have struggled and failed. But JEN, its parent company, and its founder have more than a commercial interest in these services. We are committed to making distance learning a reality, and we believe that, in an unregulated environment, our services would succeed. It would be ironic -- indeed, it would be tragic -- if a law intended to promote consumer interests resulted in regulations that not only stifled the growth of new and diverse programming but also prevented consumers from reaping the benefits of distance learning.

**A Solution: A Reasonable Fixed Markup**

The best solution -- short of revisiting the Commission's "tier-neutral" approach to rate regulation and its determination that all rates charged by systems not subject to effective competition were "unreasonable" -- would be to replace the current formula for adding channels with one that more closely replicated marketplace conditions and incentives. A pass-through of programming costs plus a percentage markup will not work, but a pass-through of programming costs plus a fixed markup could restore incentives to add new programming if (1) the fixed markup were sufficient to cover an operator's costs in adding the channel (and at least comparable to what the operator could earn from alternative unregulated uses of the channel, such as pay-per-view) and (2) the resulting rate reasonably approximated what subscribers would be willing to pay for additional new programming services.

Suppose, for example, that a 30-cent pass-through were sufficient to meet both these conditions (as we have been told by operators would be the case). Then, if JEN made ME/U or the Jones Computer Network available to a system for 3 cents per subscriber, the system could increase rates by 33 cents, with the system retaining 91% and JEN retaining 9%. That is a much more realistic approach than the existing formula, under which, if the system increased rates by 33 cents, it would retain only 7.5% -- or if it were to retain 30 cents, JEN would have to charge \$4 and subscribers would have to pay \$4.30. A 30-cent pass-through works for all parties. A programmer like JEN is able and willing to make its programming available at low rates at the outset in order to induce systems to carry the programming; a 30-cent markup on this low cost programming will make it possible for operators to add channels of programming and, we believe, will give them incentives to do so; and cable subscribers will be able to receive additional channels with modest rate increases that reflect what they have in the past been willing to pay for more viewing options.

Most importantly, such a revised approach would resuscitate the development of new programming services that are intended for, and can only survive on, the widely available tiers that include established services. It would allow existing services that have not yet reached their critical mass, like ME/U, to continue their growth and expansion and it would make it possible to launch new services like Jones Computer Network, the Health Network, and the Language Network, all of which are severely threatened by the deep freeze that the existing rules have imposed on carriage commitments.

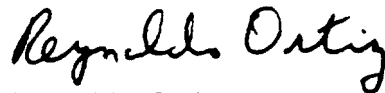
**The Honorable Reed E. Hundt**

**June 29, 1994**

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We are committed to pursuing our goal of promoting distance learning on cable television, and I believe that cable operators want to share in our efforts. But, to make this happen, the rules will have to change. I urge the Commission to recognize the urgent need to revisit the rules for adding channels and to revise them in the manner described above, so that we -- and other programmers -- can offer cable subscribers the new options and opportunities that they want and deserve. In this regard, we at JEN would be most interested in meeting with you in the near future to discuss our concerns and to assist the Commission in crafting an appropriate regulatory approach.

Very truly yours,

A handwritten signature in cursive script, reading "Reynaldo Ortiz".

Reynaldo Ortiz

RO/

cc: The Honorable James H. Quello  
The Honorable Andrew C. Barrett  
The Honorable Susan P. Ness  
The Honorable Rachelle B. Chong

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

November 3, 1994

Chairman Reed Hundt  
Federal Communications Commission  
1919 M Street, NW  
Room 814  
Washington, DC 20554

Re: MM Docket No. 92-266

Dear Chairman Hundt:

I am writing to urge the Commission to conclude the "going forward" proceeding and to provide effective opportunities for cable systems to begin adding new programming services. As CEO of an emerging programming network whose launch has been twice delayed by rate regulation of cable television, I can testify to the urgency for the programming industry. New channel launches and associated financing and carriage came to a screeching halt early in 1994. Unless the Commission acts soon, a fundamental goal of the Cable Act of 1992 -- to increase diversity and consumer choice -- will be thwarted, and the information highway will not be open to innovative new programming such as OVATION's.

I would also like to comment briefly on important implications of two proposals reportedly under consideration.

First, all channels, new or established, should be treated the same for purposes of external cost pass-throughs. This is a different issue from the question of a "flat fee" mark-up as a method of setting an initial price when a channel is added. If it is not set too low, most agree that the flat-fee-plus-cost formula for the addition of channels is a workable solution to the current lack of incentive. By contrast, external costs relate to normal license fee increases over time, and operators are allowed a 7.5% markup on fee increases for established channels. Comments filed in this proceeding have shown the need for such adjustments to preserve investment incentives for regulated services. See Comments of A&E and ESPN, filed June 16, 1994. The logic supporting the external cost adjustment

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applies whether a channel is new or already established. Indeed, if new channels are denied the adjustment, their rates will tend to be frozen at initial low levels, and operators will have an incentive constantly to churn new channels in -- and then out -- of regulated tiers to avoid this penalty. This would harm struggling new programming ventures and annoy consumers. It would further complicate the rules, as the Commission would be forced to revise its forms to accommodate different accounting treatment depending on when a channel was added. The Commission should make this external cost adjustment applicable to all channels.

Second, the Commission should recognize that any "caps" it adopts on fee increases constitute a limit on the potential for more than one hundred proposed new services -- not just a limit on fees. Also, any "cap within a cap" on licensing fees versus mark-up would further affect the addition of new services. To the extent that the permitted increase is required to include licensing fees, fewer channels overall will be available to consumers. The Commission should not equate the price of a service with its value to subscribers; most established networks necessarily started out as no-cost or low-cost offerings, and programming creativity and quality have little relationship to the size of licensing fees. Another way to minimize the problem would be to "expand the pie," and allow an increase in the overall cap to the extent the increase is devoted to licensing fees. This would accommodate some higher cost channels without penalizing new networks with lower licensing fees.

We appreciate the challenges and complexities faced by the Commission in these proceedings and look forward to their prompt and final resolution. Start-up networks must again have access to vital capital resources and distribution opportunities so that television programming will not continue to be locked in the status quo.

Thank you for your attention to these important matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harold E. Morse".

Harold E. Morse  
President and CEO

Chairman Reed Hundt  
November 3, 1994  
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cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Susan Ness  
Commissioner Rachelle B. Chong  
Mr. William Caton - Acting Secretary  
Ms. Meredith Jones - Cable Services Bureau